### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA HUNTINGTON DIVISION

Jonathan R., minor, Friend, Sarah DIXC	•	) ) )
	Plaintiffs,	) Case No. 3:19-cv-00710
V.	is official conscitues the	)
Governor of West V	is official capacity as the irginia, <i>et al</i> .,	) ) )
	Defendants.	)

# MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DE-DESIGNATE AS CONFIDENTIAL AND FOR LEAVE TO FILE UNDER SEAL

- 1. Pursuant to Local Rules 5.2.1 and 26.4, and the Second Amended Protective Order (ECF No. 386), Plaintiffs move the Court for an Order to file under seal Exhibit 3 (Bates stamped D411433-444), attached to the Declaration of Marcia Robinson Lowry in connection with Plaintiffs' Supplemental Memorandum in Support of Plaintiffs' Motion for Sanctions ("Supplemental Memorandum"). Plaintiffs request, however, that the Court de-designate as "Confidential" the information discussed in Plaintiffs' Supplemental Memorandum regarding Exhibit 3 and allow Plaintiffs an unredacted version of the Supplemental Memorandum publicly. Plaintiffs file with this motion the Supplemental Memorandum as well as all Exhibits.
- 2. Exhibit 3 contains identifying information regarding a minor child in DHHR custody and is subject to the provisions of the Second Amended Protective Order entered by the Court on November 2, 2023. *See* ECF No. 386. Defendants produced this document to Plaintiffs marked as "Confidential."
- 3. Sealing the aforementioned exhibit is necessary; reduction is impractical and would conceal relevant information from the Court. As all counsel of record in the instant litigation will

have access to the sealed document, maintaining the document under seal does not prejudice either

party. Defendants have informed Plaintiffs that they consent to the filing of this document under seal.

See Lowry Decl. ¶ 3.

4. Plaintiffs, however, move to de-designate as confidential and to file publicly the

discussion regarding Exhibit 3 contained in their Supplemental Memorandum. In their discussion

regarding Exhibit 3, Plaintiffs do not use any identifying information, such as the name or location of

the child. See Protective Order at Paragraph I(E). Instead, Plaintiffs use Exhibit 3 as an example of

the importance of ESI and note the failure of DHHR to find adequate placement for the child and the

trauma to the child that ensued. Defendants have informed Plaintiffs that they do not consent to the

public filing of a general discussion of the issues described in Exhibit 3. See Lowry Decl. ¶ 3. As

such, Plaintiffs request that the Court de-designate as "Confidential" the information redacted in

Plaintiffs' Supplemental Memorandum and allow Plaintiffs to file the unredacted version of the

Supplemental Memorandum publicly.

5. For the foregoing reasons, Plaintiffs respectfully request that Exhibit 3 remain under

seal for the duration of the above-captioned litigation, but that the information contained in their

Supplemental Memorandum be de-designated as "Confidential" and that Plaintiffs be permitted to

file their Supplemental Memorandum without redaction. Plaintiffs request permission to file their

Supplemental Memorandum with redactions while the Court considers their request.

Dated: January 29, 2024

Respectfully submitted,

/s/ Marcia Robinson Lowry\_

Marcia R. Lowry, admitted pro hac vice Julia Tebor, admitted pro hac vice Jonathan Borle, admitted pro hac vice

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#### /s/ Richard W. Walters\_

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### /s/ J. Marty Mazezka\_

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Jonathan R., minor by Next	)	
Friend Sarah DIXON, et al.,		
	)	
Plaintiffs,	)	
v.	)	Case No. 3:19-cv-00710
	)	
Jim JUSTICE, in his official capacity as	)	
the Governor of West Virginia, et al.,		
	)	
Defendants.	)	

### **CERTIFICATE OF SERVICE**

I, J. Alexander Meade, counsel for Plaintiffs, hereby certify that I have this 29<sup>th</sup> day of January, 2024, electronically filed "Memorandum of Law in Support of Plaintiffs' Motion to De-Designate as Confidential and for Leave to File Under Seal" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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Steven R. Compton, Esquire West Virginia Attorney General's Office 812 Quarrier Street, 2nd Floor Charleston, WV 25301

/s/ J. Alexander Meade
J. Alexander Meade (WVSB #13021)